



March 4, 2002

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2002-1056

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159333.

The City of Corpus Christi (the "city") received a request for information regarding any claims filed with the Corpus Christi Human Relations Commission ("CCHRC") concerning a named business or named individual. You inform us that CCHRC has identified two responsive charges, but that one has been turned over to the Equal Employment Opportunity Commission (the "EEOC") for processing. You state that the requestor was informed to request the charge from the EEOC. As for the other charge, you have submitted it to this office and claim that it is excepted from disclosure under section 552.101 of the Government Code in conjunction with Title VII of the Civil Rights Act of 1964, as amended ("title VII"). *See generally* 42 U.S.C. § 2000e *et seq.* We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's failure to comply with section 552.301 of the Government Code in asking for this attorney general decision. Section 552.301(d) provides in relevant part that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." In addition, under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld,

(2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that you received the instant request for information on November 27, 2001; however, you did not request an opinion from this office until December 20, 2001. Thus, we find that you failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Here, you claim that the submitted information is excepted from public disclosure under section 552.101. The application of section 552.101 provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will, therefore, address your section 552.101 claim.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Title VII states in relevant part:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the [EEOC], alleging that an employer . . . has engaged in an unlawful employment practice, the [EEOC] shall serve a notice of the charge . . . and shall make an investigation thereof. . . . Charges shall not be made public by the [EEOC].

42 U.S.C. § 2000e-5(b). Furthermore, title VII allows the EEOC to utilize state and local agencies in addressing title VII charges. *See* 42 U.S.C. § 2000e-4(g). In this instance, you explain that CCHRC has entered into a work sharing agreement with the EEOC to process title VII and other charges of employment discrimination filed by area residents. In support of your explanation, you have provided us with a copy of a contract entered into by the EEOC and CCHRC, which contains as an attachment the work sharing agreement. We note that under section II(A) of the work sharing agreement, the EEOC and CCHRC each designate the other as its agent for purposes of receiving and drafting charges under title VII. Furthermore, you point out and, the submitted documents reflect, that under section H.1 of the contract with the EEOC, CCHRC agrees to abide by the confidentiality provisions of title

VII, as they are interpreted by the EEOC. This confidentiality requirement is further codified in the work sharing agreement at section IV(A), which states in relevant part, “[CCHRC] will not make public any information obtained during the investigation of charges filed under these federal laws.” We believe that the federal nondisclosure provision applies to EEOC agents or employees who enforce title VII. *See* Open Records Decision Nos. 245 (1980), 155 (1977), 59 (1974). Thus, based on your representations and our review of the submitted information, we find that, as an EEOC agent enforcing title VII, the CCHRC may only release the submitted charge in accordance with title VII.

With respect to the responsive charge being processed by the EEOC, if that charge is held by the EEOC on behalf of CCHRC, then CCHRC is obligated to obtain it from the EEOC. *See* Gov’t Code § 552.002(a); Open Records Decision No. 534 (1989) (deciding that a governmental body is not obligated to obtain information from another entity, so long as the entity does not hold the information on behalf of the governmental body). However, CCHRC may only release the charge in accordance with title VII, as explained above. Otherwise, the Public Information Act does not require CCHRC to obtain the information about the EEOC-processed claim in response to this request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

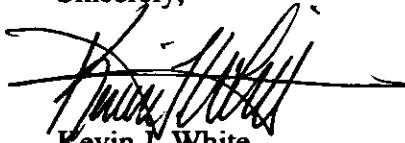
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin J. White', with a horizontal line drawn through the middle of the signature.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 159333

Enc. Submitted documents

c: Ms. Sharon A. Rymas
15417 Cuttysark
Corpus Christi, Texas 78418
(w/o enclosures)